IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

OP.No. 24885 of 1998(K)

PETITIONERS:

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1. R.K. KESAVAN, POLICE CONSTABLE (P.C.4163), NADAPURAM POLICE STATION, NADAPURAM, KOZHIKODE DIST.

2. T.P. BALAKRISHNAN, POLICE CONSTABLE (PC 4164), KOYILANDY POLICE STATION, KOYILANDY, KOZHIKODE DIST.

BY ADV. SRI.V.K.RAVINDRAN
SRI.P.V.MOHAN

RESPONDENTS:

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1. STATE OF KERALA, REP. BY SECRETARY TO GOVERNMENT OF KERALA, HOME DEPARTMENT, TRIVANDRUM.

2. THE DIRECTOR GENERAL OF POLICE, TRIVANDRUM.

3. THE SUPERINTENDENT OF POLICE, KOZHIKODE (RURAL), BADAGARA, KOZHIKODE - 673 104.

BY GOVERNMENT PLEADER SRI. NOBLE MATHEW

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONERS' EXHIBITS:

EXT.P1 TRUE COPY OF LETTER DT. 5/1993.

EXT.P2 ORDER DT. 1-11-1989.

EXT.P3 CIRCULAR DT. 6-11-1992.

EXT.P4 ORDER DT. 8-8-1995.

EXT.P5 ORDER DT. 25-9-1993.

EXT.P6 ORDER DT. 8-12-1993.

EXT.P7 ORDER DT. 24-5-1992.

EXT.P8 ORDER DT. 9-1-1992.

EXT.P9 ORDER DT. 11/1995.

EXT.P10 REQUEST MADE BY 1ST PETITIONER.

EXT.P11 LETTER DT. 4-10-1996.

EXT.P12 LETTER ISSUED BOY SUPDT OF POLICE, KOZHIKODE.

EXT.P13 LETTER DT. 10-3-1997.

EXT.P14 REPRESENTATION DT. 12-3-1997

EXT.P15 REJECTION ORDER DT. 2/1998.

EXT.P16 REPRESENTATION DT. 8-10-1997.

EXT.P17 LETTER DT. 27-11-1997.

EXT.P18 LETTER DT. 1-8-1996.

EXT.P19 ORDER DT. 9/1996.

EXT.P20 ORDER DT. 6-10-1996.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

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O.P. No. 24885 of 1998

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Dated this, the 14th February, 2007.

J U D G M E N T

Petitioners are Police Constables appointed in the Armed Police Battalion as trainees on 1-8-1974. After training, they were regularly appointed as Police Constables with effect from 1-6-1975. Thereafter, they were promoted as Havildars on 20-4-1981. Later on, at their request, they were transferred to the District Armed Reserve as Constables on 7-6-1982. In the District Armed Reserve, the petitioners were promoted as Head Constables on 8-6-1982 by Ext. P1 order. On completion of 10 years in the cadre of Head Constable, they were given higher grade on 19-4-1991. Thereafter, on their request, by Ext. P8 order, they were transferred to the local police. As per the rules, when persons are transferred to the local police from the Armed Reserve Police, they would be reverted as Police Constables. Accordingly, they joined the local police as Constables on 9-1-1992. However, at that time the pay they were drawing were protected although in the lower scale of pay applicable to Police Constables. In November, 1993, this protection was cancelled and their pay was re-fixed in the scale of pay of Police Constable without taking into account the pay they were drawing in the Armed Reserve Police. The higher grade granted to them was also cancelled and the excess amounts paid to them on account of the above were recovered. Thereafter, by Ext. P9 order, the petitioners were granted higher grade. Later, by Ext. P9 order, they were granted 10 year higher grade as Police Constables with effect from 1-6-1995 excluding the period of service put in as Head Constables in the Armed Police Battalion and District Armed Reserve Police. The petitioners' representation against this was answered by Ext. P11, by which it was clarified that although taking into account the period of service put in as Head Constables, they are eligible for 20 years' higher

grade, for the purpose of granting higher grade as Police Constables they are not entitled to count their service put in as Head Constables. The petitioners again filed representation pointing out Ext. P4 order by which pursuant to a judgment of this Court in O.P.No. 5481/1990, it was clarified that the benefit of time bound higher grade would be extended to those who are promoted for short spell, but reverted to lower post for want of vacancies and are continuing in the lower post also. It was further clarified that in such cases, their service in the higher post would also be reckoned for computing the prescribed qualifying service in the lower post provided they are eligible for time bound high grade promotion as per the existing rules relating to time bound higher grade scheme. Since their representation did not meet with success, the petitioners filed O.P.No. 20457/1997 before this Court in which the Director General of Police was directed to consider the claim of the petitioners in the light of Ext. P4 order. However, by Ext. P15 order, again the claim of the petitioners was rejected holding that as per the existing rules, the period spent in the higher rank will be excluded for granting first 10 year higher grade to a Police Constable who is transferred to local police on reversion as Police Constable. But, the benefit of Ext. P4 order was stated to be not available to the petitioners on the ground that they were not reverted to local police for want of vacancies. The petitioners would contend that since, on account of their subsequent reversion and recovery of excess amount received in the cadre of Head Constable, they must be deemed to have continued all along as Police Constables and that being so, it would be totally unjust to deny them the benefit of 10 year higher grade treating their period of service as Head Constable as service put in as Police Constable. Therefore, in this

original petition they are challenging Exts. P12, P13 and P15.

2. Learned Government Pleader on the strength of the counter affidavit filed, would submit that the petitioners are not entitled to the benefit of Ext. P4 since they were reverted from the post of Head Constable to Police Constable not for want of vacancy which alone would make them eligible for the benefit of Ext. P4. He would submit that Ext. P4 order is not applicable to the petitioners and they are not entitled to reckon their period put in as Head Constables for the purpose of grant of 10 year higher grade promotion in the cadre of Police Constables.

3. I have considered the rival contentions in detail.

4. At the outset, I must state that the attitude of the respondents in this case is unjust to say the least. Perhaps for the purpose of seniority and promotion, the petitioners may not be entitled to have their service as Head Constable reckoned. But, it cannot be held that their service at least in the cadre of Police Constable is totally wiped out simply because they opted first for transfer to District Armed Reserve and then to the local police surrendering in the process their benefit as Head Constables. Once all the benefits the petitioners have received in the cadre of Head Constables have been recovered from them, it should be deemed that they have been continuing as Police Constables in Armed Police Battalion, the District Armed Reserve Police and the local police from 1-8-1974 onwards. Therefore, for the purpose of computing their benefits in the cadre of Police Constable, the service put in in those organisations as Head Constables cannot be lightly discarded. Consequently, they would also be entitled to all the benefits as Police Constables in the matter of granting higher grades with effect from

the date of their appointment in the Armed Police Battalion taking into account their service as Head Constables also. The contention of the learned Government Pleader that Ext. P4 would be applicable only in case of reversion on account of want of vacancy does not appeal to me.

5. Originally, in Ext. P3 Government Order relating to pay revision for the year 1988, it was held as follows:

> "(xiii) Those who got promotion for some time and then reverted and are continuing in the entry grade/same grade will be allowed the benefit of grade promotion provided they have at their credit the specified qualifying service excluding the period during which they were holding the higher post on promotion. [G.O(P) 707/81 (373) Fin. Dated 28-10-1981]. However, the broken periods of service in the higher post due to reversion to a lower post, will be reckoned for computing the total qualifying service in the higher post for sanctioning higher grade subject to the restriction laid down in the ruling below rule 33(a) Part-I Kerala Service Rules. In other words, such broken periods can be reckoned for higher grade only if they qualify for normal increments [G.O.(P) 49/83/(481) Fin. Dated 20-1-1983.]"

Some Government servants challenged the injustice behind the said rule and apparently in O.P. No. 5481/1990, this Court directed the Government to rectify the anomaly, which resulted in Ext. P4 order. As such, simply because in peculiar circumstances applicable to the Police Constables coming from the Armed Police Battalion and District Armed Reserve Police, their reversion could not be termed as one for want of vacancy, it is clear that they also stand on the same footing as those who were reverted for want of vacancy and the benefit of Ext. P4 to such category of Police Constables would amount to discrimination, according to me. As such, I am satisfied that the stand taken by the respondents in Exts. P12, P13 and P15 are totally arbitrary and discriminatory.

Accordingly, the same are hereby quashed. There would be a

consequent direction to the respondents to re-compute the higher grade promotion benefits of the petitioners treating them as continuing as Police Constables ever since their appointment in Armed Police Battalion and taking into account the entire service put in by them in all the three departments. Accordingly, the service benefits arising therefrom in the matter of granting higher grades shall be re-computed and arrears given to them. This process shall be completed within a period of two months from the date of receipt of a copy of this judgment. The original petition is allowed as above.

Sd/- S. Siri Jagan, Judge.

Tds/